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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 ALAN TIKAL, ) NO. ED CV 17-1554-DMG(E)  
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13 Petitioner, )  
14 )  
15 v. ) ORDER OF DISMISSAL  
16 )  
17 STEVE LANGFORD, Warden, )  
18 )  
19 Respondent. )  
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18 BACKGROUND  
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20 On August 3, 2017, Petitioner, a federal prisoner, filed a  
21 putative habeas corpus petition pursuant to 28 U.S.C. section 2241.  
22 Petitioner alleges that prison officials at the Federal Correctional  
23 Institution at Lompoc, California, transferred Petitioner to a Special  
24 Housing Unit ("SHU"), assertedly in retaliation for allegedly filing a  
25 complaint concerning the alleged destruction of Petitioner's mail.  
26 Petitioner alleges that prison officials improperly justified the  
27 transfer as an "investigation hold." Petitioner further contends that  
28 Petitioner presently is denied telephone, email and recreation

1 privileges and law library access. Petitioner also contends that the  
2 SHU placement violated due process and that any administrative remedy  
3 is "futile." Petitioner seeks restoration to his previous status, a  
4 "cease and desist" order preventing "all illegal intimidation" and  
5 damages in the sum of \$500.

## 6 7 DISCUSSION

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9 Habeas corpus "is the exclusive remedy . . . for the prisoner who  
10 seeks 'immediate or speedier release' from confinement." Skinner v.  
11 Switzer, 562 U.S. 521, 525 (2011) (citation omitted). A challenge to  
12 the fact or duration of confinement which, if successful, would result  
13 in immediate or speedier release falls within the "core" of habeas  
14 corpus. Preiser v. Rodriguez, 411 U.S. 475, 487-89 (1973); Nettles v.  
15 Grounds, 830 F.3d 922, 927-29 (9th Cir. 2016) (en banc), cert. denied,  
16 137 S. Ct. 645 (2017). A civil rights action is the exclusive vehicle  
17 for an inmate's claim that does not fall within the "core" of habeas  
18 corpus, such as a challenge to the conditions of confinement. Nettles  
19 v. Grounds, 830 F.3d at 931-34. Accordingly, Petitioner may not use  
20 the present habeas corpus Petition to bring claims regarding allegedly  
21 unlawful conditions of confinement. Petitioner may attempt to assert  
22 such claims through the vehicle of a civil rights action pursuant to  
23 Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,  
24 403 U.S. 388 (1971) ("Bivens").<sup>1</sup>

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27 <sup>1</sup> The Court expresses no opinion regarding whether a  
28 Bivens remedy is available to Petitioner on the claims alleged in  
the Petition. See Ziglar v. Abbasi, 137 S. Ct. 1843 (2017)  
(limiting reach of Bivens remedies).

1        This Court declines to exercise its discretion to convert the  
2 present Petition into a Bivens complaint. "If the complaint is  
3 amenable to conversion on its face, meaning that it names the correct  
4 defendants and seeks the correct relief, the court may recharacterize  
5 the petition so long as it warns the pro se litigant of the  
6 consequences of the conversion and provides an opportunity for the  
7 litigant to withdraw or amend his or her complaint." Nettles v.  
8 Grounds, 830 F.3d at 936 (citations and internal quotations omitted).  
9 The Petition is not "amenable to conversion on its face." Petitioner  
10 identifies only the prison Warden as Respondent, does not assert that  
11 the Warden had any personal involvement in any alleged civil rights  
12 violations<sup>2</sup> and does not name as defendants any individuals who  
13 purportedly violated Petitioner's civil rights.

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15        Additionally, "a habeas corpus action and a prisoner civil rights  
16 suit differ in a variety of respects - such as . . . filing fees, the  
17 means of collecting them, and restrictions on future filings - that  
18 may make recharacterization impossible or, if possible,  
19 disadvantageous to the prisoner compared to a dismissal without  
20 prejudice of his petition for habeas corpus." Nettles v. Grounds, 830  
21 F.3d at 935-36 (citations and internal quotations omitted); see also  
22 id. at 932 n.8 (describing differences between procedural requirements  
23 applicable to habeas corpus actions and to civil rights actions).  
24 Accordingly, conversion of the present Petition into a Bivens

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26        <sup>2</sup> See Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009)  
27 ("Government officials may not be held liable for the  
28 unconstitutional conduct of their subordinates on a theory of  
*respondeat superior*"). A supervisor "is only liable for his or  
her own misconduct," and is not "accountable for the misdeeds of  
[his or her] agents." Id. at 677.

1 complaint would be inappropriate. See Glaus v. Anderson, 408 F.3d  
2 382, 388 (7th Cir. 2005) (court relied on myriad differences between  
3 habeas actions and civil rights actions in affirming district court's  
4 refusal to recharacterize a habeas petition as a civil rights  
5 complaint); Jorgenson v. Spearman, 2016 WL 2996942, at \*1 (C.D. Cal.  
6 May 22, 2016) (declining to convert a flawed habeas petition into a  
7 civil rights complaint "in light of the considerable procedural and  
8 substantive differences between habeas corpus and civil rights  
9 matters"); Wise v. Gore, 2016 WL 6581849, at \*2 & n.1 (S.D. Cal.  
10 Nov. 7, 2016) (petition not amenable to conversion to a civil rights  
11 complaint where some of petitioner's claims sounded in habeas while  
12 others did not).

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14 **ORDER**

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16 For the foregoing reasons, the Petition and the action are  
17 dismissed without leave to amend but without prejudice.

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19 DATED: August 28, 2017

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22 HOLLY M. GEE  
UNITED STATES DISTRICT JUDGE

23 Presented this 7th day  
24 of August, 2017, by:

25  
26 /s/  
27 CHARLES F. EICK  
UNITED STATES MAGISTRATE JUDGE